

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company :
: **02-0479**
Petition for declaration of service currently :
provided under Rate 6L to 3 MW and :
greater customers as a competitive service :
pursuant to Section 16-113 of the Public :
Utilities Act and approval of related tariff :
amendments. :

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On July 19, 2002, Commonwealth Edison Company ("ComEd" or the "Company") filed a Petition with the Illinois Commerce Commission ("Commission") seeking (1) the entry of an order pursuant to Section 16-113 of the Public Utilities Act ("Act") (220 ILCS 5/16-113) declaring the provision of electric service currently provided under its Rate 6L – Large General Service ("Rate 6L") to the 3MW and greater customer segment to be a competitive service and (2) approval of related tariff amendments implementing the competitive declaration. The Petition included both the proposed amendments and supporting testimony. Under ComEd's proposal, these amendments would become effective on December 1, 2002, and become operational beginning with the first day of its June 2003 monthly billing period.

In response to ComEd's filing, each of the following parties filed Petitions to Intervene: People's Energy Service Corp. ("Peoples"); Central Illinois Light Company ("CILCO"); the People of Cook County, by and through Richard A. Devine, State's Attorney of Cook County ("County"); the People of the State of Illinois ("AG"); Illinois Power Company ("IP"); Blackhawk Energy Services, LLC ("Blackhawk"); MidAmerican Energy Co. ("MidAmerican"); Illinois Industrial Energy Consumers ("IIEC"); U.S. Department of Energy ("DOE"); Citizens Utility Board ("CUB"); Metropolitan Water and Reclamation District ("MWRD"); Chicago Area Customer Coalition ("CACC"); AmerenCIPS and AmerenUE; Building Owners and Managers Association ("BOMA"); Trizec Properties, Inc. ("Trizec"); National Energy Marketers Association ("NEMA"); AES NewEnergy, Inc. (now known as Constellation NewEnergy, Inc.) ("NewEnergy"); and the Metropolitan Chicago Healthcare Council. These Petitions were granted by the Administrative Law Judges ("ALJs"). Appearances were filed by the City of Chicago ("City") and the Staff of the Commission ("Staff").

On November 14, 2002, the Commission entered an Interim Order that allowed ComEd's competitive declaration, for customers 3MW and greater, to go into effect by operation of law. ComEd filed tariff sheets consistent with the Commission's findings

and conclusions, and such tariffs went into effect on December 1, 2002. The Interim Order also directed ComEd to file its proposed tariff amendments to Rate HEP in accordance with the ALJs' ruling of September 4, 2002.

Applications for Rehearing of the Interim Order were filed by the City, the County, and CUB (collectively, Governmental and Consumer Parties or "GCP"); Trizec; IIEC; and BOMA. The Commission took no action on the Applications for Rehearing and they were deemed to be denied by operation of law. IIEC and BOMA filed Notices of Appeal with the Appellate Court of the First Judicial District.

Pursuant to notice given in accordance with the law and the rules and regulations of the Commission, hearings were held on the proposed amendments to Rate HEP before duly authorized ALJs at its offices in Chicago, Illinois on February 20, 2003. ComEd presented the testimony of the following witnesses: Lawrence Alongi, Director, Distribution Pricing; and Paul Crumrine, Director, Regulatory Strategies and Services. Peter Lazare, Senior Economic Analyst, testified on behalf of Staff. Guy Scharfman, Consultant and Director of Energy Strategy for the Energy Marketing Group of Econ One Research, Inc., testified on behalf of the BOMA and the CACC. The DOE presented the testimony of Matthew Kahal, Consultant to Exeter Associates, Inc.; Robert Stephens, Consultant with Brubaker and Associates, testified on behalf of the IIEC. At the conclusion of the hearing, the record was marked "Heard and Taken."

On March 6, 2003, ComEd filed a Motion For Additional Hearings and to Enter Proposed Order ("Motion"). Attached to the Motion was the Supplemental Testimony of Paul R. Crumrine on Reopening (ComEd Ex. 17), a Stipulation, and a Draft Order. The Signatories to the Stipulation were: Peoples, BOMA, the County, NewEnergy, Trizec, NEMA, the City and MidAmerican. The non-signatories were: CILCO; the AG; IP; Blackhawk; IIEC; DOE; CUB; MWRD; CACC; AmerenCIPS and AmerenUE; the Metropolitan Chicago Healthcare Council; and Staff. On March 10, 2003, Staff and IIEC filed responses to ComEd's Motion. A Joint Reply in support of the Motion was filed by the Signatories to the Stipulation as well as CUB (collectively the "Joint Movants").

In the Motion, ComEd and the Signatories to the Stipulation agreed, on a limited and conditional basis, to waive their rights to proffer additional testimony and evidence, to participate at additional hearings and argument, and to brief or otherwise pursue alternative conclusions under the due process to which they are entitled. ComEd and the parties stated that the limited waivers would be effective only if the Commission (1) granted the Motion in its entirety, including but not limited to entering the Proposed Order in a form identical (save any necessary format and proceeding description changes) to the form attached to the Motion; (2) granted the similar motions that were filed in Dockets 02-0656/ 02-0671/02-0672/02-0834 (Consol.) (the Market Value Index proceeding or "MVI") and Docket 01-0423; and (3) with respect to the tariff sheets for Rider MEP – Monthly Energy Pricing ("Rider MEP") that ComEd agreed to file on March 7, 2003, passes them to file or otherwise permits those tariff sheets to become effective on less than 45 days notice.

The Joint Movants agreed to withdraw their objections to ComEd's testimony and recommended that the Commission enter ComEd's Proposed Order based on the

existing factual record and the modifications contained in the Supplemental Testimony. The Joint Movants stated that if the Commission did not accept ComEd's and the other parties to the Agreement's limited and conditional waivers, the Joint Movants would not object to ComEd withdrawing its Motion and the supporting documents and they would proceed with this Docket.

At the Commission Bench session on March 12, 2003, the Commission granted ComEd's Motion to the extent that additional hearings would be held. Pursuant to that direction, the record was reopened on March 12, 2003 and an additional evidentiary hearing was held on March 17, 2003. At that hearing, ComEd presented the supplemental testimony of Paul R. Crumrine. The record was again marked "Heard and Taken" on March 18, 2003.

Initial Briefs were filed by Staff, CACC, IIEC and ComEd. The ALJPO was served on the parties on March 24, 2003. A Joint Brief on Exceptions was filed by Trizec, BOMA, and NewEnergy. Illinois Power, IIEC, ComEd, and Staff also filed Briefs on Exceptions.

II. PHASE II – AMENDMENTS TO RATE HEP

A. ComEd's Position

ComEd explains that Rate HEP is a one-part firm tariffed bundled service that provides day-ahead forecasted hourly energy prices designed to reflect the most current hourly energy price information available each day before service is provided.

In its Petition, ComEd proposed amendments to Rate HEP that would: (1) provide that the per unit rate determined in the annual computation of the Monthly Access Charge under Rate HEP would never be lower than the corresponding sum of the Distribution Facilities Charge and Transmission Services and Ancillary Transmission Services Charges that would be applicable to the customer if it were taking service under Rate RCDS – Retail Customer Delivery Service (“Rate RCDS”) and Rider ISS – Interim Supply Service; (2) delete the provision in Rate HEP that prevents a customer from resuming service under Rate HEP for 12 months following the customer's election to discontinue service under the rate; (3) allow a customer to terminate service under Rate HEP by giving ComEd 60-days written notice; and (4) delete the requirement in the Availability section of Rate HEP that a customer must sign a Rate HEP contract with ComEd in order to take service under the rate.

ComEd contends the proposed changes are appropriate because they would: (1) ensure that Rate HEP service will not inadvertently become more economically advantageous to a customer than obtaining electric power and energy supplied by a Retail Electric Supplier (“RES”) with delivery provided by ComEd; (2) assure that customers who are no longer eligible to take service under Rate 6L will not be foreclosed from taking service under Rate HEP; (3) provide the customer continued flexibility to choose among energy options, while providing ComEd with advance notice of short-term load demand changes to allow for adequate planning; and (4) generally make it easier for customers to commence or terminate service on Rate HEP.

In response to parties' opposition to the Monthly Access Charge of Rate HEP and ComEd's use of PJM Interconnection, L.L.C. ("PJM") price shapes in the determination of the hourly energy charges of Rate HEP, ComEd argues that the basis for the Monthly Access Charge of Rate HEP is directly related to the revenue-neutral design of the rate itself that was approved by the Commission in Docket 98-0362. ComEd notes that Docket 98-0362 was initiated by the Commission to investigate ComEd's May 1, 1998, filing made to satisfy the requirements of Section 16-107 of the Act to offer a real-time pricing tariffed option. ComEd further explains that the rate contains three billing components: (1) the monthly customer charge; (2) the Monthly Access Charge expressed in \$/kW; and (3) hourly energy charges in \$/kilowatt-hour. ComEd contends that in order to maintain revenue-neutrality with its then existing rate structure, the Monthly Access Charge of Rate HEP was designed to recover the remainder of ComEd's revenue requirement not recovered through the hourly energy prices and the monthly customer charge. As support for its proposal, ComEd also cited the Commission's Order in Docket 98-0362, wherein the Commission concluded that:

[We] agree with ComEd and Staff that Rate HEP meets the definitional requirements of the Act. Rate HEP is a real-time pricing tariff available to all nonresidential retail customers and contains energy charges that vary on an hourly basis. We therefore find that rate HEP meets the requirements of Section 16-107. The Commission further finds that the use of previously approved rates to establish the cost basis for Rate HEP meets the Article IX just and reasonable requirements. (Docket 98-0362 Order, at 11).

Further, ComEd maintains that the use of PJM price shapes was first introduced in March, 2000 for use in determining the Market Value Energy Charges ("MVECs") of ComEd's Rider PPO – Power Purchase Option (Market Index) ("Rider PPO"). ComEd contends the use of PJM price shapes in ComEd's methodology for determining MVECs of Rider PPO was reviewed extensively in Dockets 00-0259/00-0395/00-0462 (Consol.), and the methodology was approved by the Commission. ComEd asserts that after the PJM price shapes had first been used in the MVEC methodology, ComEd proposed in January, 2001 that they also be used in the determination of hourly energy prices of Rate HEP when ComEd transferred the remainder of its generation to Exelon Generation and would thus no longer have measures of incremental production costs that were previously used in the pricing methodology of Rate HEP. ComEd contends that the proposed use of PJM price shapes for this purpose was accepted by the Commission and became effective in March, 2001.

In the supplemental testimony of Mr. Crumrine, filed with the Motion, ComEd recommended that the Commission approve the alternative Rate HEP tariff filed by ComEd witness Lawrence S. Alongi with certain modifications consistent with the resolution of issues in Dockets 02-0656/02-0671/02-0672/02-0834 (Consol.).

In his surrebuttal testimony, Mr. Alongi proposed an alternative design to Rate HEP based on Rate IPP. He testified that under the alternative Rate HEP charges would include:

- (a) charges calculated to equal the charges for delivery services as provided in Rate RCDS (except that the Standard Metering Service Charge under Rate RCDS would not apply because under the existing structure of Rate HEP no standard metering is provided);
- (b) charges calculated to equal the charges for transmission services and ancillary transmission services as provided in Rider ISS - Interim Supply Service or Rider TS - Transmission Services, as applicable;
- (c) charges calculated to equal the charges for the supply of electric power and energy determined by the Pricing Methodology defined in Rate HEP;
- (d) a charge expressed in cents per kilowatt-hour calculated to equal the charge determined using the formula set forth in the definition of the transition charge in Section 16-102 of the Act, except that:
 - (i) the market value in item (3) of such formula that is used to determine such charge shall be determined in accordance with Section 16-112 of the Act except that such market value will be increased by 10% to maintain the revenue neutral rate design of Rate HEP (in the Supplemental Testimony of Crumrine, this was changed as follows: the market value in item (3) of such formula that is used to determine such charge shall be determined in accordance with Section 16-112 of the Public Utilities Act except that such market value will not include any adjustments or any adders underlying the Market Value Energy Charges of Rider PPO - Power Purchase Option (Market Index) for the corresponding Applicable Period A, however, such value will be increased for system average line losses and will be increased by 10% consistent with the increases for system average line losses and the contribution to fixed cost adder included in $Price_{Hr}$);
 - (ii) such charge would not be reduced for the mitigation factor as defined in Section 16-102 of the Act, item (4) of such formula; and
 - (iii) such charge would not be less than zero;
- (e) charges calculated to equal the charges for metering determined by the Metering Requirements defined in Rate HEP; and
- (f) charges for any other costs the Company incurs in providing service under the rate.

Changes were made to this alternative design by Mr. Crumrine in his supplemental testimony that were: (1) the inclusion of additional language in the description of market value under item (d)(i) of the Charges Section of the tariff and (2) the addition of the clarifying phrase "system average" in front of the phrase "line losses" in the first paragraph under the Pricing Methodology Section. The Joint Movants

support this alternative design of Rate HEP if the other motions are granted in Docket 01-0423 and Dockets 02-0656/02-0671/02-0672/02-0834 (Consol.).

B. IIEC's Position

IIEC witness Stephens enumerates a number of problems that he sees with Rate HEP. First, the monthly access charge under Rate HEP retains a link to Rate 6L revenues, even though ComEd has withdrawn Rate 6L eligibility for these customers, and it poses significant financial exposure to customers through its demand charge structure. He explains that the monthly access charge has no bearing on any aspect of ComEd's cost structure going forward and, in his opinion, is a detriment to the viability of Rate HEP.

Second, he opines that Rate HEP is an inferior rate option to ComEd's Rate 6L service and Rate RCDS with Rider PPO. This, he asserts, has been demonstrated by Rate HEP's failure to attract customers. He maintains that customers are not interested in prices that vary by the hour, but rather in rates that offer predictability.

Third, Mr. Stephens avers that if viable competitive options do not develop, ComEd will have absolved itself of price risk, as the hourly energy prices under Rate HEP will be market based, while at the same time ComEd will have locked in regulated rate-based revenues through the monthly access charge.

Mr. Stephens asserts that a provider of last resort ("POLR") rate should not be designed to be onerous to customers if they find themselves in a position where they require POLR service and, further, that it should provide them appropriate price signals. The provider, in this case ComEd, should not be forced to provide POLR service at prices below its actual cost. Finally, he argues that the POLR rate should not harm the development of a competitive market. As such, it should be used only as a last resort for those customers who have been unable to find a workable alternative supply and who have lost the right to standard bundled service such as Rate 6L.

IIEC asserts that Rate HEP is not an appropriate default or POLR rate. Further, Rate HEP does not meet the requirements of the Act as a just and reasonable rate. IIEC maintains, therefore, that the Commission should encourage ComEd to adopt an appropriate POLR or default rate for customers 3 MW and over, such as the annual rate proposed by IIEC witness Stephens.

In order to improve Rate HEP for customers, Mr. Stephens made several recommendations for amendments to Rate HEP. First, he would restructure the monthly access charge so that it no longer contains any revenue linkage to the bundled service rate. He, therefore, proposes that the monthly access charge under Rate HEP should equate to the sum of the distribution facilities charge under Rate RCDS and the transmission services and ancillary transmission service charges that would be applicable to the customer if it were taking service under Rate RCDS and Rider ISS - Interim Supply Service. Taken together, he contends that these charges would represent the cost of delivering power under the rate.

Second, while IIEC believes that the lawful, just and reasonable rate should be based upon the cost of providing the service, if the Commission determine, for whatever reason, the rate should include a charge equivalent to the transition charges defined in Section 16-102 of the Act, it should deny ComEd's request to exclude a credit equal to the mitigation factor described in the transition charge definition. Third, customers should be permitted to terminate service upon thirty days notice instead of sixty days. Finally, the Commission should determine and initiate a procedure, proceeding, or workshop designed to investigate and recommend various POLR rate options, including the "wholesale" option recommended by DOE witness Kahal.

C. DOE's Position

DOE provided the testimony of Matthew I. Kahal in support of its position. Mr. Kahal testified that if a customer is no longer eligible for Rate 6L and if the PPO is no longer available, Rate HEP effectively becomes the only POLR service available to these customers. He recommends that ComEd also be required to offer a fixed price POLR service.

According to Mr. Kahal, the notice requirement should be further reduced from 60 days (as proposed by ComEd) to 30 days. He contends that very little lead-time is needed to plan for an hourly service.

Moreover, DOE objects to the floor proposed for the monthly access charge, because even without the price floor provision, Rate HEP is not a threat to the competitive market.

Further, Mr. Kahal testified that the Monthly Access Charge in Rate HEP links the revenues that the customer must pay to the revenues the customer would pay under Rate 6L (for customers 3MW and greater). The practical effect of this linkage, he explains, is that it denies customers the benefit of the mitigation factor.

DOE proposes two alternatives for remedying the problems with Rate HEP. First, he suggests retaining the Monthly Access Charge but in calculating its value subtract out the mitigation factor (this assumes there is a non-zero CTC in effect). Alternatively, he proposes eliminating the Monthly Access Charge and requiring that the Rate HEP customer pay the same delivery service charges (including transmission charges and the CTC) that the customer would pay if it selected competitive retail service.

D. Staff's Position

Staff witness Lazare testified regarding ComEd's proposed changes to Rate HEP. (Staff Ex. 4.0). He indicated that Staff has no objection to the first three ComEd original proposed revisions to Rate HEP and recommends that they be included in any approved Rate HEP.

ComEd's proposed use of a floor for the Monthly Access Charge, according to Staff, is inconsistent with the Article IX requirement of just and reasonable rates or cost-

based ratemaking. ComEd's proposal prevents the Monthly Access Charge from falling below a floor represented by the corresponding Distribution Facilities Charge and Transmission Services and Ancillary Transmission Services Charges for delivery services and Rider ISS. Staff notes that its proposal allows ComEd to recover the cost of delivering electricity to customers, as well as the cost of the electricity itself, and an adder. No floor, Staff avers, is necessary. The floor, Staff maintains, protects ComEd from falling prices but does nothing to allow customers the benefit of lower charges.

Although ComEd argues that its proposal will foster competition by ensuring that Rate HEP will not inadvertently become more economically advantageous to a customer than obtaining electric power and energy supplied by a RES, Staff asserts that the Company has failed to provide any statutory authority for the proposed deviation from cost of service principles. Moreover, Staff discourages the Commission from adopting any rate design that favors one service option over another.

Staff disagrees with the delivery component of ComEd's original Rate HEP proposal. Staff argues that it fails to reflect the current cost of service. Staff explains that Rate HEP was developed from the bundled service Rate 6L which was set in a 1994 rate case and was not designed to determine the cost of delivering hourly energy costs directly, but rather sought to produce revenue neutrality with Rate 6L service. However, Staff notes that recently, in the delivery services dockets, the Commission has directly determined the cost of delivering energy to individual customers. Staff contends that it is the rates adopted in the delivery services docket which most accurately reflect the cost of delivering hourly energy to 3MW and greater customers, not the indirect method employed in the development of the current Rate HEP. Further, the Company's delivery component is developed in a complex manner that is difficult for customers to evaluate.

Staff maintains that due to the Commission's Interim Order in this docket allowing ComEd's competitive declaration to go into effect by operation of law, Rate HEP will now be the default POLR rate. The ComEd proposal maintains the revenue neutrality of Rate HEP to Rate 6L that was approved by the Commission in Docket 98-0362. Staff notes, however, that Rate 6L is being phased out. Due to this, Staff asserts that Rate HEP rates should not be tied to Rate 6L. When the Commission approved Rate HEP revenue neutrality, the Commission had never determined cost-based rates for the delivery services. Now, however, all customers are entitled to delivery services at cost-based rates determined by the Commission. Moreover, Staff argues that ComEd has been relieved of the obligation to assume market risk in order to service its 3MW customers and ComEd is no longer required to arrange for sufficient generation to provide full requirements services to all of its customers except those that had chosen an interruptible rate.

Staff submits that its proposal allows ComEd to recover the cost of delivering electricity to customers, as well as the cost of the electricity itself, and an adder. The utility would, Staff notes, recover its costs plus a margin. Staff's proposal excludes any transition charges that these customers would pay under delivery services, which Staff maintains are not part of the cost of delivering energy to Rate RCDS customers.

Staff addresses the surrebuttal testimony of Mr. Alongi in its Initial Brief. Staff points out that this new alternative adds a transition charge on top of Staff's proposal. Staff maintains that transition charges are intended to apply only to delivery service rates. Moreover, Staff avers that there is no cost justification for this charge.

E. CACC's Position

Although CACC is not a signatory to the Stipulation, it indicates in its Initial Brief that it does not object to the Commission granting the Motion. If, however, the Motion is denied, the CACC reserves the right to present additional argument with respect to the evidence in the record and reserves the right to respond to arguments raised in other parties briefs.

III. COMMISSION ANALYSIS AND CONCLUSIONS

Rate HEP is the tariffed service through which ComEd offers real time pricing as required by the Act. 220 ILCS 5/16-107. A public utility's real-time pricing tariffs are subject to Article IX of the Act. 220 ILCS 5/16-107(c). Article IX requires that rates shall be just and reasonable. 220 ILCS 5/9-101. Rate HEP was originally approved by the Commission in 1998 in Docket 98-0362. After reviewing the evidence in that proceeding, the Commission determined that the use of previously approved rates to establish the cost basis for Rate HEP met the just and reasonable requirement of Article IX. In this proceeding, the Commission must similarly determine if the proposed amendments to Rate HEP are just and reasonable.

IIEC, in its Brief on Exceptions, complains that the Commission is not adopting a POLR rate. ComEd offers Rate HEP because it is statutorily mandated to do so. It was not originally, nor is it now, offered as a POLR rate. A decision on ComEd's POLR obligations is beyond the scope of this Rate HEP proceeding.

ComEd proposed four changes to Rate HEP in its original testimony. Of these four, only two were contested by the other parties to the proceeding. The Commission agrees that the non-contested issues, i.e. deleting the provision that barred customers from returning to Rate HEP for 12 months and removing the requirement that customers sign a contract to take Rate HEP service, are reasonable and approved by the Commission.

The first contested issue was whether the notice given to ComEd should be shortened to 60 days or whether 30 days was more appropriate as proposed by the DOE. The Commission agrees that 60 days is a reasonable notice period. It is short enough to allow customers flexibility in choosing their provider and yet long enough to provide ComEd adequate time to manage its load requirements.

The second contested issue, as initially proposed by ComEd, retained the revenue neutrality of Rate HEP and added a proposed floor to the monthly access charge to ensure that Rate HEP did not become a more attractive option to customers than receiving service from an alternative supplier. ComEd proposed an alternative

Rate HEP design in the surrebuttal testimony of Alongi, and amended in the supplemental testimony of Crumrine, that is addressed below.

As explained by Staff witness Lazare, the initial ComEd proposal maintains the current charges for delivering Rate HEP energy, approved by the Commission in Docket 98-0362. This begins with the bundled price which a customer would pay for electricity under Rate 6L, a price that was determined in Docket 94-0065 in 1994. From that bundled price, ComEd derives an access charge, which along with the facilities and energy charges, comprise the Rate HEP bills. Under this approach, no relationship is established between the Rate HEP Monthly Access Charge and the current cost of delivering power and energy to the customer. Rather, it was designed to maintain the revenue neutrality of Rate HEP with Rate 6L. Incorporating a revenue neutrality requirement in Rate HEP is neither required nor prohibited by the Act. ComEd argues in its Brief on Exceptions that Section 16-111(a)(ii) prohibits the Commission from lowering the revenue requirement that it would otherwise receive from the applicable base rate used to maintain revenue neutrality. In other words, ComEd suggests that Section 16-111 requires the Commission to retain revenue neutrality. Rate HEP was not in effect until September, 1998 and, thus, this Section does not apply to Rate HEP.

As explained below, the Commission finds the alternative Rate HEP design (as modified) to be more transparent than the original proposal for Rate HEP and, therefore, addresses Staff's and other parties' concerns that Rate HEP is not transparent enough. For this reason, the Commission rejects ComEd's original proposal for Rate HEP.

Without a traditional rate filing as would normally be required under Article IX for a bundled rate, the Commission must choose the most appropriate option presented to it. Staff's proposal, as Trizec, BOMA and NewEnergy point out in their Joint Brief on Exceptions, would result in Rate HEP being priced like a delivery services option with a customer transition charge of zero. Supply from a RES would continue to be accompanied by a transition charge and Staff's proposal would thus inhibit RES competition with Rate HEP.

The alternative Rate HEP, proposed by the Joint Movants in the surrebuttal testimony of Alongi and the supplemental testimony of Crumrine, is essentially the proposal of Staff and IIEC, with the addition of a charge that reflects the delivery services transition charges without the mitigation factor. ComEd argues that revenue neutrality to bundled rates must be maintained in this case and proposes to accomplish this by assessing a charge similar to transition charges. Staff argues that because Rate HEP is a bundled service, ComEd cannot collect transition charges.

The statute provides for transition charges when a customer receives service from a supplier other than ComEd or through the PPO which specifically provides that customers are delivery services customers and subject to transition charges. Section 16-107 has no similar provision. The alternative Rate HEP and the conclusions reached in this Order, however, do not call for the unbundling of services or the imposition of delivery services transition charge. Customers taking service under Rate HEP will not be paying either delivery services charges or transition charges as those charges are defined in the Act. The customer will be taking bundled Rate HEP, with

charges structured to align more closely with charges paid by delivery services customers to better help customers and suppliers compare rate options. We find that Rate HEP as approved herein will help increase the transparency of the rate to allow customers to more readily compare rate options. Charges must be similarly designed so that customers can weigh whether it is to their benefit to manage their load in such a way to make hourly pricing attractive to them.

The alternative Rate HEP also contains a provision for "other charges." The Commission finds that because ComEd was not able to adequately define what this is comprised of, this provision is also disallowed.

The rate approved herein provides clarity in pricing, regardless of the service option chosen by the customer. In particular, we note that this helps promote competition, which furthers the goals established for the Commission by the General Assembly in Section 16-101A(d) of the Act. Consistent with the Commission's findings in the Interim Order, it is inappropriate to design a rate so that its price will be so low that RESs will not be able to compete. Rate HEP has become a hybrid rate, similar to Rate IPP and Rate ISS. It is bundled, yet it is designed so that customers can make a meaningful comparison to unbundled services. The result reached in this Order is the same result proposed in the Joint Brief on Exceptions filed by BOMA, Trizec and NewEnergy. Moreover, in its Initial Brief, IIEC argues that if the Commission chooses to allow ComEd to collect the transition like charge, then the charge should also include a credit equal to the mitigation factor. The Commission agrees that fairness requires that IIEC's position on this point be adopted. For these reasons, the Commission adopts the following compromise structure for Rate HEP:

- (a) charges calculated to equal the charges for delivery services as provided in Rate RCDS (except that the Standard Metering Service Charge under Rate RCDS would not apply because under the existing structure of Rate HEP no standard metering is provided);
- (b) charges calculated to equal the charges for transmission services and ancillary transmission services as provided in Rider ISS - Interim Supply Service or Rider TS - Transmission Services, as applicable;
- (c) charges calculated to equal the charges for the supply of electric power and energy determined by the Pricing Methodology defined in Rate HEP;
- (d) a charge expressed in cents per kilowatt-hour calculated to equal the charge determined using the formula set forth in the definition of the transition charge in Section 16-102 of the Act, except that:
 - (i) the market value in item (3) of such formula that is used to determine such charge shall be determined in accordance with Section 16-112 of the Public Utilities Act except that such market value will not include any adjustments or any adders underlying the Market Value Energy Charges of Rider PPO - Power Purchase Option (Market Index) for the corresponding Applicable Period A,

however, such value will be increased for system average line losses and will be increased by 10% consistent with the increases for system average line losses and the contribution to fixed cost adder included in Price_{Hr}

- (ii) such charge would not be less than zero;
- (e) charges calculated to equal the charges for metering determined by the Metering Requirements defined in Rate HEP.

IV. FINDINGS AND ORDERINGS PARAGRAPHS

The Commission, having reviewed the record herein, is of the opinion and finds that:

- (1) Commonwealth Edison Company is an Illinois corporation engaged in the transmission, sale and distribution of electricity to the public in Illinois, and as such is a public utility within the meaning of Section 3-105 of the Public Utilities Act, and an electric utility as defined in Section 16-102 of the Public Utilities Act;
- (2) the Commission has jurisdiction over ComEd and the subject matter of this proceeding;
- (3) the recitals of fact and conclusions of law set out in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) ComEd is directed to file the new tariff amendments to Rate HEP consistent with the conclusions herein, to become effective on April 21, 2003;
- (5) the proposed tariffs, as herein modified, are just and reasonable.

IT IS THEREFORE ORDERED by the Commission that ComEd is hereby authorized to file tariff amendments consistent with the determinations and findings made in this Order, within three calendar days of the date of the Order with such tariffs to become effective no earlier than five days after the date of filing and in no event later than May 1, 2003; the proposed tariffs, as herein modified, are just and reasonable.

IT IS FURTHER ORDERED that any and all requests or objections not heretofore specifically ruled upon are hereby deemed disposed of in a manner consistent with the ultimate conclusions contained in this Order.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 28th day of March, 2003.

(SIGNED) EDWARD C. HURLEY

Chairman